

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1920.

No. 3348. **623**

JOHN P. MOORE, APPELLANT,

vs.

ESTELLE A. WOODEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 22, 1919.

PRINTED JANUARY 13, 1920.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1920.

No. 3348.

JOHN P. MOORE, APPELLANT,

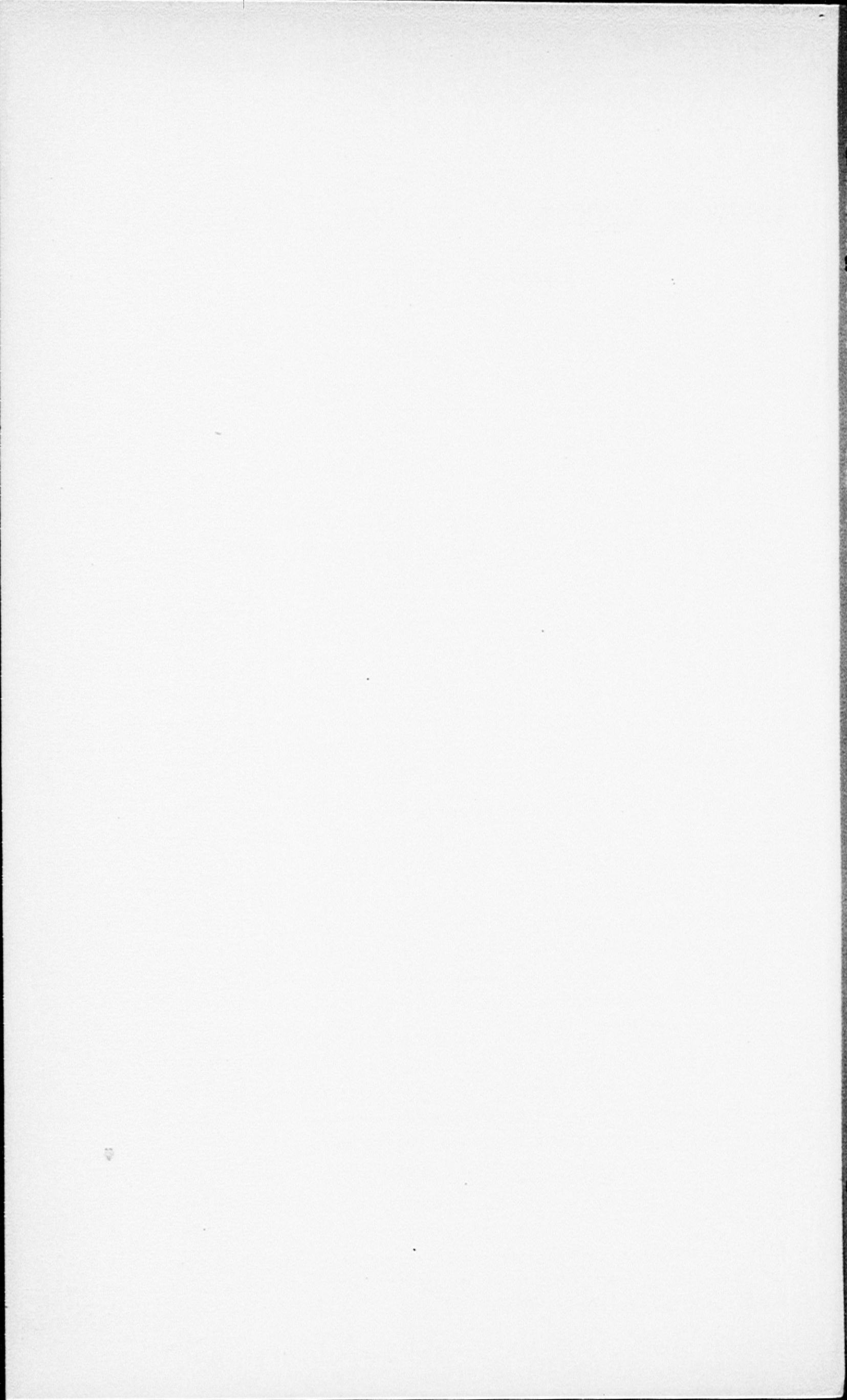
vs.

ESTELLE A. WOODEN, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 3348.

JOHN P. MOORE, Appellant,

vs.

ESTELLE A. WOODEN.

a Supreme Court of the District of Columbia.

At Law. No. 62925.

ESTELLE A. WOODEN, Plaintiff,

vs.

JOHN P. MOORE, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Complaint.*

Filed October 9, 1919.

In the Supreme Court of the District of Columbia.

At Law. No. 62925.

ESTELLE A. WOODEN, Plaintiff,

vs.

JOHN P. MOORE, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainant Estelle A. Wooden, being first duly sworn according to law, states that she is entitled to the possession of the premises No. 716 E street, Northeast, being lot numbered 63 in

Square 892, located in the District of Columbia, and that the same is unlawfully detained from me and held without right by the defendant John P. Moore, to whom complainant's predecessors in title, and the agents of such predecessors had heretofore rented the said premises as a monthly tenant or by sufferance and whose tenancy and estate has been determined by the service of a due notice to quit, and that said complainant is further a purchaser thereof for her own occupancy, the said premises having been sold to complainant in fee simple as a bona fide purchaser for her own occupancy; by the said predecessors and fee simple owners thereof. Complainant therefore prays that a Summons be issued, commanding the defendant to appear and show cause why judgment should not be given against him for the restitution of the possession of said premises, and costs of this suit.

ESTELLE A. WOODEN.

MASON N. RICHARDSON,
CHAS. S. SHREVE,
Att'ys Plff.

2 Subscribed and sworn to before me this 11th day of September A. D. 1919.

[SEAL.] R. OWEN EDMONSTON, JR. [SEAL.]

Summons.

* * * * *

The President of the United States to the defendant, John V. Moore,
Greeting:

You are hereby summoned to appear in this Court on the 24th day of September A. D. 1919, at 10 o'clock A. M., to answer the plaintiff's complaint and show cause why judgment should not be given against you for the restitution of the possession of the premises described in the complaint under oath filed herein by said plaintiff and costs of this suit, and in case of your failure so to appear and answer, the suit will be proceeded with as in case of default.

Witness the Honorable Judges of said Court this 11th day of September, A. D. 1919.

BLANCHE NEFF, [SEAL.]
Clerk,

By R. H. ROLLINS,
Assistant Clerk.

C—Sept. 29—10 Def.
1.00 Pd. Clerk.

Marshal's Return.

9/12/19.

Summoned as within directed.

MAURICE SPLAIN,
U. S. Marshal.
By G. F. VAUGHAN,
Deputy Marshal.

3

Judgment.

September 29, 1919.

Judgment for plaintiff for possession of the within described premises after trial with costs.

R. H. TERRELL,
Judge.

Affidavit of Plaintiff Under Rule 19.

Filed October 18, 1919.

* * * * *

DISTRICT OF COLUMBIA:

I, Estelle A. Wooden, being first duly sworn on oath depose and say that I am the plaintiff in the above entitled cause and that I have a just and meritorious cause of action against the defendant, John P. Moore, as follows:

That on the 23rd day of June A. D. 1919, by deed recorded that day and recorded on the 25th day of June A. D. 1919 in Liber 4207 at folio 462 et seq. one of the land records of the District of Columbia, I purchased for my own occupancy and became the owner in fee simple of Lot numbered Sixty-Three (63) in Harry A. Kite's subdivision of lots in Square numbered Eight Hundred and Ninety-Two, improved by house and premises number 716 E Street, N. E., in the City of Washington, District of Columbia, being more particularly described in the original deed aforesaid, and in a copy thereof hereto annexed marked plaintiff's exhibit A., and prayed to be taken and read as a part hereof. That at that time I was living at 714 E Street N. E. which I owned, and as the said house in which I then lived was on the corner of an alley and adjacent to the noise of traffic passing through said alley and because of the noise of adjacent business establishments, I was compelled to purchase the other house namely 716 E st. N. E. which had none of the said annoyances, for my own occupancy and did then and there on the 23rd day of June A. D. 1919 so purchase the same, for my own occupancy. That the above defendant is the present occupant of the said premises (so purchased by me) as follows: that by written agreement dated the 28th day of November A. D. 1913 (a copy of which is hereto annexed marked plaintiff's exhibit B and made a part hereof) the defendant John P. Moore became a tenant of said premises 716 E street, N. E. herein (possession of which herein is sued for) from month to month at a rental of \$27.50 per month payable monthly in advance on the 5th day of each and every month thereafter, with Moore and Hill Incorporated, a corporation, the then agent of the then owner of said premises, and defendant entered into possession of said premises under said agreement as a tenant from month to month, and continued to pay rent to said

Moore and Hill Inc. That about two years thereafter by verbal agreement the said rent was reduced by said Moore and Hill Inc. to \$25.50 per month, and the tenant continued to remain under said new rental with Moore and Hill Inc. and later with Stone and Fairfax, Incorporated, a corporation, the successive rental agents of the then-owners thereof, the said Stone and Fairfax also representing the said Nettie L. Allison owner and grantor aforesaid to this plaintiff of said premises; and said tenant and defendant was thereafter served personally by the plaintiff, on July 9th, 1919, with the following notice to quit;

5

Washington, D. C., July 8, 1919.

Mr. John P. Moore,

716 E Street, N. E.

Washington, D. C.

DEAR SIR:

I am desirous to have possession of the house and premises known as number 716 E Street, N. E. located in the District of Columbia, which until recently you held of Moore and Hill as a tenant by sufferance. The reversion by mesne assignment and conveyance has become vested in me. I am not in the employ of or officially connected with any branch of the Government. The property has been sold to me and I am a bona Fide purchaser of the property. I purchased it for my own occupancy. Now therefore I give you notice to remove from and quit said premises known as number 716 E street N. E. located in the District of Columbia on the 30th day after the day of the service of this notice.

Very truly yours,

ESTELLE A. WOODEN.

That thereafter on to wit the 11th day of September A. D. 1919, I filed a landlord and tenant complaint in Landlord and Tenant Cause No. 177,197 in the Municipal Court of the District of Columbia, and on the 29th day of September A. D. 1919, after a trial in said cause obtained judgment in favor of this plaintiff against the defendant in this cause. That the said defendant has appealed from said judgment against him, to this Court in this cause, and reference is hereby made to said original papers therein as if set forth in extenso. That this Complaint in said Municipal Court was based upon the said 'Thirty Days' Notice and said Deed to Plaintiff, and the fact that plaintiff is the owner of said premises, and has bought the same for her own occupancy as hereinbefore set forth, and upon all assignments hereinbefore set forth. That thereafter plaintiff sold the premises in which plaintiff now lives being unwilling to sell the same until having bought the premises herein sued for. That plaintiff has not received nor has said defendant paid to plaintiff any rent for the said premises whatsoever. That plaintiff is entitled to possession of the said premises.

ESTELLE A. WOODEN.

6 Subscribed and sworn to before me this 17th day of October,
1919.

[SEAL.]

H. F. KIMBALL,
Notary Public, D. C.

PLAINTIFF'S EXHIBIT A.

This deed, Made this Twenty-third day of June, in the year one thousand nine hundred and Nineteen, by and between Nettie Allison, widow, of the District of Columbia, party of the first part, and Estelle A. Wooden, also of said District, parties of the second part:

Witnesseth, That in consideration of Ten (\$10) Dollars, the party of the first part does grant unto the party of the second part, in fee simple, all that piece or parcel of land in the — of Washington, District of Columbia, described as follows, to wit:

Lot numbered Sixty-three (63) in Harry A. Kite's subdivision of Lots in square numbered Eight Hundred and Ninety-Two (892), as per plat of said subdivision recorded in Book 34, Page 149, of the records of the office of the Surveyor of the District of Columbia, together with a perpetual right of way for alley purposes over the rear Three (3) feet of Lots numbered Sixty (60), Sixty-one (61), Sixty-two (62), and Sixty-four (64) in said subdivision, and subject to a right of way for alley purposes over the rear Three (3) feet of said Lot numbered Sixty-three (63), for the benefit of Lots numbered Sixty (60), Sixty-one (61), Sixty-two (62), and Sixty-four (64), of said subdivision, and also for the benefit of Lot numbered
7 Fifty-one (51), in Kelly's subdivision in said Square recorded in Book H. D. C. Page 177, of said Surveyor's Office Records.

together with the improvements, rights, privileges, and appurtenances to the same belonging subject to two prior deeds of trust of record aggregating the sum of Thirty-six Hundred and Fifty (\$3,650) Dollars which the party of the second part by accepting this deed assumes and agrees to pay.

And the said party of the first part covenants that she will warrant specially the property hereby conveyed: and that she will execute such further assurances of said land as may be requisite.

Witness her hand and seal the day and year first hereinbefore written.

NETTIE ALLISON. [SEAL.]

In presence of—
JNO. T. MEANY.

DISTRICT OF COLUMBIA, *To wit:*

I, John T. Meany a Notary Public in and for the District of Columbia, do hereby certify that Nettie Allison, widow, party to a certain Deed bearing date on the 23rd. day of June, 1919, and hereto annexed, personally appeared before me in said District, the said Nettie Allison being personally well known to me as the person who exe-

cuted the said Deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this 23rd. day of June, 1919.

JNO. T. MEANY, [SEAL.]
Notary Public.

(Endorsed.)

Received for Record on the 25 day of June A. D. 1919 at 2.58 o'clock P. M., and recorded in Liber No. 4207 at folio 416 one of the Land Records for the District of Columbia, and examined by

R. W. DUTTON,
Deputy R. of D., D. of Col.

8

PLAINTIFF'S EXHIBIT B.

This agreement made this 28th day of November, 1913, between Moore & Hill, Incorporated, a corporation, of the first part, and J. P. Moore of the second part, all of the City of Washington, District of Columbia, whereby the parties of the first part has let, and does hereby let, to the said party of the second part the premises known as No. 716 E Street, N. E. in said city (the same being a dwelling), by the month commencing on the Fifth day of December A. D. 1913 at and for the monthly rent of Twenty-seven & 50/100 Dollars, payable in advance; that is to say, on the 5th. day of each month during said tenancy, as rent in advance for the next ensuing month; payable at the office of Moore & Hill, Incorporated, or at the office of its assigns.

And the said party of the second part has agreed to take and does hereby take and hold the said premises as tenant by the month at the said rent payable as aforesaid, and that he will pay the gas and electric light bills as they become due, and that he will not sublet or assign the said premises or any part thereof, or carry on any business therein, or use the said premises for any purpose, except that of dwelling without the written consent of the said Lessors, or use the same for any disorderly or unlawful purpose.

The party of the second part further agrees to repair all damage to the plumbing, such as the stoppage of drain pipes, the bursting of pipes by freezing, or other damage to the plumbing, resulting from careless use, at his own cost and expence.

Provided, That if the said lessee shall fail to pay the said rent in advance as aforesaid, although there should have been no legal or formal demand for the same, or shall neglect to pay the gas bills at the time or on the day the same shall fall due and be payable as hereinbefore mentioned, or shall sublet or assign the said premises or any part thereof, or carry on any business therein, or use the said premises for any purpose, except that of a dwelling as aforesaid, without the written consent as aforesaid, or shall use the same for any disorderly or unlawful purpose, or break either of the aforesaid covenants and agreements, then and in either of said events, this agreement, and all things herein contained, shall cease and deter-

mine, and shall operate as a notice to quit, the thirty days' notice to quit being hereby expressly waived. And the said Lessor, or its assigns, shall and may proceed to recover possession of said — under and by virtue of a seven days' summons under the provisions of the Code of Law for the District of Columbia relating to proceedings in cases between landlords and tenants, or by such legal process as may at the time be in operation in the District of Columbia in like cases; but if no default occurs on the part of the said Lessee and the said Lessee shall keep all of the agreements herein contained, then he shall be entitled to not less than thirty days' notice to vacate the house and premises, which notice shall be given in writing, at least thirty days before said tenancy is intended to be terminated, and the owner or agent shall be entitled to the same notice from the Lessee, should he desire to vacate the aforesaid house and premises.

9 And it is further provided, That if under the provisions of this agreement a seven days' summons shall be served and a compromise or settlement shall be made thereupon, it shall not constitute a waiver of any covenant or agreement herein contained. And the said Lessee hereby agrees to deliver the house in the same order in which it was received, usual wear and tear, fire and storm excepted; and it is hereby agreed that no waiver of one breach of any covenant or agreement herein contained shall be construed to waive or in any manner affect the covenants or agreements of the agreement or the agreement itself.

It is hereby covenanted and agreed, By the said party of the second part that he will at all times during his continuance in possession of the said premises acknowledge the title and defend the possession of the said part- of the first part, or its assigns, and that he will not acquire or seek to acquire title thereto nor acknowledge title thereto in any other persons or person without first surrendering actual possession thereof to the party of the first part, or its assigns, except by the written consent of the said party of the first part or its assigns.

It is further agreed, That rent shall cease if the said premises be destroyed by fire or any unavoidable casualty, so as to make them uninhabitable.

In testimony whereof, We have hereunto set our hands and seals the day and year first hereinbefore written.

Witness:

JOHN P. MOORE. [SEAL.]

W. A. HILL. [SEAL.]

For value received We hereby transfer, assign, and set over to Nettie L. Allison assigns, all our right, title, and interest in this agreement, and all benefit and advantage to be derived therefrom.

Witness our hands and seals this 2nd. day of June 1919.

MOORE & HILL, Inc.,

By Secy.

June 23rd, 1919.

For value received I do hereby assign all my right title and interest in the within agreement unto Estelle A. Wooden.

NETTIE L. ALLISON. [SEAL.]

Affidavit of Defense Under Rule 19.

Filed October 24, 1919.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, John P. Moore, being first duly sworn depose and say that I am the defendant in the above entitled cause and I have a true and sufficient defense to said cause of action as follows:

10 In that said premises were not bought for the use and occupancy by plaintiff and plaintiff does not intend to occupy the same as in her affidavit set forth; that said premises are now for sale by the plaintiff, and this plaintiff has no idea, purpose or intention of occupying said premises for any purpose whatsoever. And defendant therefore denies the right of the plaintiff to the possession of said premises.

J. P. MOORE.

Subscribed and sworn to before me this 24 day of October, 1919.

[SEAL.]

WALTER C. ENGLISH,

Notary Public, D. C.

Amended Affidavit of Defense Under Rule 19.

(Filed by Leave of Court.)

Filed November 10, 1919.

* * * * *

DISTRICT OF COLUMBIA, ss:

I, John P. Moore being first duly sworn depose and say that I am the defendant in the above entitled cause; that I am employed by the Government in the office of the Treasury, Auditor for the War Department and have a true and sufficient defense to the cause of action, to-wit: While the plaintiff has purchased the premises herein, yet said purchase was not made for the use of a home by the plaintiff or for occupancy by the plaintiff, but for the purpose of profiteering in said real estate transaction; that this was the only purpose of said purchase and further the plaintiff has offered the property for sale with a view to making a profit on the same and plaintiff has no intention whatever to occupy said premises for any purpose what-
 11 ever, her sole object being to oust the defendant who is engaged in Government work as aforesaid, for her own profit and benefit.

JOHN P. MOORE.

Subscribed and sworn to before me this 10th day of November, 1919.

[SEAL.]

DORA PALKIN,
Notary Public, D. C.

My commission expires Oct. 1923.

Supreme Court of the District of Columbia.

Friday, November 14th, 1919.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * *

Upon consideration of the motion of plaintiff filed herein by her attorney for judgment for want of a sufficient affidavit of defense, it is ordered that said motion be and the same is hereby granted. Wherefore, it is considered that the plaintiff do have and recover of the defendant possession of the premises No. 716 E Street, Northeast, being lot numbered 63 in Square 892, located in the District of Columbia, and recover of the defendant and the United States Fidelity & Guaranty Company, surety, her costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the defendant by his attorney, in open court, notes an appeal to the Court of Appeals; whereupon, the penalty of a bond to operate as a supersedeas is hereby fixed in the sum of Five Hundred Dollars.

12

Memorandum.

November 17, 1919.—Supersedeas Bond approved and filed.

Assignment of Error.

Filed December 11, 1919.

* * * * *

1. The Court erred in directing a judgment herein for the plaintiff.

2. The Court erred in holding the affidavit of the defendant herein insufficient.

3. The Court erred in holding that the defendant's affidavit of defense did not constitute, under proper rules of pleading, a complete and sufficient defense to the plaintiff's cause of action herein.

4. The Court erred in rendering judgment contrary to the provisions of the act of May 31, 1918, entitled Joint Resolution to Prevent Profiteering in the District of Columbia, and also contrary to the provisions of what is known as the Ball act.

5. The Court erred in denying the defendant right of trial by jury, respecting questions raised in his affidavit of defense.

6. The Court erred in holding that defendant's affidavit of defense

does not sufficiently challenge the bona fide of the purchase of the premises herein for occupancy by the plaintiff as contemplated by said act.

E. HILTON JACKSON,
Attorney for Defendant.

Designation of Record.

Filed December 11, 1919.

* * * * *

The Clerk of said Court will prepare for the record for the Court of Appeals the following:

1. Complaint and Summons of the Municipal Court.
2. Affidavit of plaintiff under rule 19.
3. Two affidavits of defendant under rule 19.
4. Judgment in the Supreme Court of the District of Columbia.
5. Memorandum of appeal by defendant and filing of bond.
6. Assignment of error.
7. This memorandum.

E. HILTON JACKSON,
Attorney for Defendant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 62925 at Law, wherein Estelle A. Wooden is Plaintiff and John P. Moore is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of December, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3348. John P. Moore, appellant, vs. Estelle A. Wooden. Court of Appeals, District of Columbia. Filed Dec. 22, 1919. Henry W. Hodges, Clerk.

IN THE
Court of Appeals, District of Columbia

No. 3348.

JOHN P. MOORE, *Appellant*.
VS.
ESTELLE A. WOODEN, *Appellee*.

Statement of the Case

This is an appeal from a judgment of the Supreme Court of the District of Columbia entered on the 14th day of November, 1919, under Law Rule 19 of said court in a landlord and tenant proceeding.

The appellee, plaintiff, in said landlord and tenant proceeding, in her complaint averred that she was entitled to the possession of the premises herein from the appellant upon the ground that said appellee was a *bona fide* purchaser of said premises for her own occupancy and that appellant, prior to said purchase rented said premises as a monthly tenant, which tenancy, is alleged to have been determined by the service of a due notice to quit.

The appellant in his affidavit of defense, filed pursuant to said Law Rule 19, admits the purchase of the

premises by the appellee, and expressly sets forth that said purchase was not made for the use of a home by the appellee or for occupancy but for the purpose of profiteering in the real estate transaction and further that appellee had offered the property for sale with a view to making a profit on the same and had no intention whatever of occupying said premises for any purpose whatsoever.

The Court below held the appellant's affidavit of defense insufficient and thereupon entered judgment for the appellee for the possession of the premises, from which judgment the appellant has duly perfected his appeal.

Assignment of Error

1. The Court erred in directing a judgment herein for the plaintiff.

2. The Court erred in holding the affidavit of the defendant herein insufficient.

3. The Court erred in holding that the defendant's affidavit of defense did not constitute, under proper rules of pleading, a complete and sufficient defense to the plaintiff's cause of action herein.

4. The Court erred in rendering judgment contrary to the provisions of the act of May 31, 1918, entitled Joint Resolution to Prevent Profiteering in the District of Columbia, and also contrary to the provisions of what is known as the Ball act.

5. The Court erred in denying the defendant right of trial by jury, respecting questions raised in his affidavit of defense.

6. The Court erred in holding that defendant's affidavit of defense does not sufficiently challenge the

bona fide of the purchase of the premises here for occupancy by the plaintiff as contemplated by said act.

Argument

The foregoing assignment of error may be simply resolved into two propositions of law:

1. The appellant was deprived by said judgment of the court of the right to trial by jury.

2. The act of the Court below deprives the appellant of his rights under and by virtue of the act of Congress known as the Ball Amendment to Anti-profiteering Law of the 66th Congress, approved October 22, 1919. The foregoing assignments will be considered in their order.

1. The Appellant was deprived by said judgment of the Court of the right to trial by jury.

By the seventh amendment to the Constitution of the United States it is provided: "In suits at law where the value in controversy exceeds \$20.00 the right of trial by jury shall be preserved."

It is submitted that Congress may not take from citizens of the District of Columbia the right to trial by jury any more than it can take it from the citizens of a State.

Callan vs. Wilson, 127 U. S. 541.

This proposition for this jurisdiction was finally removed from the realm of argument in the case of Wilson vs. McDonald, 48 W. L. R. page 6, where the court said:

"It will be well, before proceeding to an analysis of the Resolution before us, to determine to what extent the people of this District are pro-

tected by the Constitution of the United States. The assertion has been made that, Congress having power 'to exercise exclusive legislation in all cases whatsoever' in the District (Constitution, Art. 1, Sec. 8, par. 17), the provisions of the Constitution, which protect persons and property in all other places under the jurisdiction of the United States, are without particular force here. To this we can not accede. It would be an anomalous situation, indeed, if nearly half a million people at the seat of Government, under the very dome of the Capitol, should suffer such a discrimination and be outside the protection of the Constitution. Fortunately, this question has been set at rest by the Supreme Court of the United States. In *Callan v. Wilson*, 127 N. U. 540, 550, Mr. Justice Harlan, speaking for the court, said: 'There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guarantees of life, liberty, and property.' In *Wight v. Davidson*, 181 U. S. 371, 384, the court, speaking of an act regulating assessments on property in the District of Columbia, said: 'No doubt, in the exercise of such legislative powers, Congress is subject to the provisions of the Fifth Amendment to the Constitution of the United States, which provides, among other things, that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.' ''

Apart from the foregoing considerations, attention is called to Section 74, Code D. C. "All appeals from a justice of the peace shall be heard and determined in a circuit court."

Again Section 80, Code D. C. "On such appeal the circuit court shall in a summary way hear the case *de novo* upon the proofs, etc."

And further Section 1232 of the Code, D. C. provides:

"Either party against whom judgment is rendered by a Justice of the Peace, in the action aforesaid by the landlord to recover possession of the leased premises, may appeal from such judgment, and such appeal shall be tried in the Supreme Court in the same manner in which appeals from justices of the peace are taken and tried in other cases."

It would appear therefore that Law Rule 19 is in contravention of the organic and statute law of this jurisdiction.

State vs. Gillian, 119 Mo. 94.

Van Inger vs. Burger, 82 O. St. 255.

If a statute imposes certain conditions and gives the litigant certain rights upon compliance therewith the Court may not by rules impose further and more onerous conditions.

Hickemell vs. First National Bank, 62 Pa. St. 146.

Goodwin vs. Bickford, 20 Okla. 91, 98.

Westcott vs. Eccless, 3 Utah, 258.

City of Pekin vs. Dunkelburgh, 4 Ill. App. 184.

The only purpose of Rule 19 is to produce an issue of fact and where this is accomplished the rule has served its purpose.

“It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues.”

Fidelity & Deposit Co. vs. United States, 187 U. S. 315, 320.

It is therefore confidently submitted that the action of the lower court deprives the appellant of his right to a trial by jury and appellant, having complied with all the requirements of law to perfect his appeal, it was beyond the power of said court to enter the summary judgment against him under said Rule 19.

2. The action of the Court below deprives the appellant of his rights under and by virtue of the act of Congress known as the Ball Amendment to Anti-profiteering Law of the 66th Congress, approved October 22, 1919.

In relying upon the Ball Amendment approved October 22, 1919, attention is called at the outset to the fact that the judgment for possession was entered against appellant in the Municipal Court of the District of Columbia prior to said approval on, to-wit, the 29th day of September, 1919. The contention of appellant is that he is entitled to the benefit of the provisions of said act, notwithstanding the pendency of the proceedings herein in the Supreme Court of the District of Columbia when said act became a law on October 22, 1919.

The particular provisions of said act upon which appellant relies are:

“In any suit in any court of the United States or the District of Columbia involving any question arising out of the relation of landlord and tenant with respect to any rental property, apartment or hotel, except on appeal from the commission’s determination as provided in this title, such court shall determine the rights and duties of the parties in accordance with the determination and regulations, etc.”

“And such tenant shall not be evicted or dispossessed so long as he pays the rent and performs the other terms and conditions of the tenancy as fixed by such lease or contract, or in case such lease or contract is modified by any determination or regulation of the commission then as fixed by such modified lease or contract. All remedies of the owner at law or equity, based on any provision of any such lease or contract to the effect that such lease or contract shall be determined or forfeited if the premises are sold, are hereby suspended so long as this title is in force. * * * The rights of the tenant under this title shall be subject the limitation that the *bona fide* owner of any rental property, apartment, or hotel shall have the right to possession thereof for actual and *bona fide* occupancy by himself, or his wife, children or dependents.

“If there is a dispute between the owner and the tenant as to the accuracy or sufficiency of the statement set forth in such notice, as to the good faith of such demand, or as to the service of

notice, the matters in dispute shall be determined by the commission upon complaint as provided in section 106 of this title.

“Sec. 122. It is hereby declared that the provisions of this title are made necessary by emergencies growing out of the war with the Imperial German Government, resulting in rental conditions in the District of Columbia dangerous to the public health and burdensome to public officers and employees whose duties require them to reside within the District and other persons whose activities are essential to the maintenance and comfort of such officers and employees, and thereby embarrassing the Federal Government in the transaction of the public business.”

Pursuant to the provisions of said Ball Amendment appellant has filed with the Rent Commission, created by said act, his complaint in accordance with the terms of said Act, setting up among other things that the appellee is not the bona fide purchaser of the premises herein for her own occupancy and has asked for a determination of that question by the Rent Commission.

Appellant, therefore, relies upon the constitutionality of said Ball Amendment, and, assuming the same to be constitutional, he asks for a suspension of the determination of the appeal herein until said Commission has determined the questions raised by the petition filed with said Commission.

It is therefore respectfully submitted that the judgment of the Court below should be reversed.

E. HILTON JACKSON.
Attorney for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

MAR 29 1920

Harry W. H. H.
W. H. H.

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1920

No. 3348

JOHN P. MOORE, Appellant,

VS.

ESTELLE A. WOODEN, Appellee.

BRIEF FOR APPELLEE

MASON N. RICHARDSON,
CHAS. S. SHREVE,
Attorneys for Appellee.

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In the Court of Appeals

OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1920

JOHN P. MOORE, Appellant,

vs.

ESTELLE A. WOODEN, Appellee

No. 3348

BRIEF FOR APPELLEE

STATEMENT OF CASE

Suit was instituted in the Municipal Court of the District of Columbia, by the appellee (hereinafter referred to as "plaintiff") to recover possession of premises number 716 E Street, N. E., in the City of Washington, District of Columbia, being designated as lot numbered 63 in square numbered 892, at that time occupied by the ap-

pellent (hereinafter designated as the "defendant") as a tenant by the month, or as termed, at sufferance. After trial judgment was rendered in favor of the plaintiff for possession of the said premises, against the defendant, and from which judgment the said defendant appealed, to the Supreme Court of the District of Columbia, the cause being therein entitled At Law No. 62,925. In the latter Court the plaintiff filed an affidavit under Rule 19 Law Rules of that Court, which provides for the entry of judgment for possession in such cases, upon the plaintiff filing and serving on the defendant an affidavit setting out the grounds upon which he claims possession, unless the defendant shall file an affidavit of defense denying the right of the plaintiff to the possession of the property in question and specifically stating in precise and distinct terms the grounds of defense, which must be such as would, if true, be sufficient to defeat plaintiff's recovery. (rr. p. g. 3-4-5-6-7-8.)

Plaintiff's affidavit, filed in the Supreme Court, sets forth inter alia, that by deed in fee simple dated June 23, 1919, recorded June 25, 1919, in Liber 4207 at folio 462 et. seq., land records of the District of Columbia, he purchased in good faith for his own occupancy and in fee simple, the property the subject of this suit, hereinbefore set forth; that at that time she was living at 714 E Street N. E., which she then owned, (adjoining the property in controversy) that the house in which she then lived was on the corner of an alley and

adjacent to the noise of traffic passing through said alley, and because of the noise of such traffic and of adjacent business establishments, she was compelled to purchase the house the subject of this suit (716 E St. N. E.) which had none of those annoyances; and that she did then and there purchase the same for her own occupancy (r. pp. 3). That the defendant (the appellant) is the present occupant of the premises in suit, under a written agreement dated the 28th day of November A. D. 1913, whereby defendant became a tenant of premises 716 E St. N. E., in controversy, from month to month, at a rental of \$27.50 per month, payable monthly in advance on the 5th day of each month thereafter, with Moore and Hill Incorporated, a corporation, the then agent of the then owner of the said premises, and defendant entered into possession of said premises under said agreement and continued thereunder from month to month. That about two years thereafter the said rent was reduced to \$25.50 per month, and the tenant continued to remain under said new rental with Moore and Hill, Inc., and later with Stone and Fairfax, Incorporated, the successive rental agent of Nettie L. Allison, owner thereof of said premises in dispute, and who was the grantor to the plaintiff in fee simple. (r. 4.) That copies of the deed in fee and the rental agreement with successive assignments thereon to this plaintiff, are filed with the affidavit as exhibits (pp. 5-6-7).

That the plaintiff, on June 9, 1919, personally served defendant with a written notice of 30 days

to quite the said premises in controversy, a copy of the notice being attached to affidavit, (r. p. 4). That plaintiff in the meantime had sold the premises in which she lived (adjoining those in controversy). That plaintiff has not received any rent from defendant. That thereafter on October 24, 1919 (r. p. 8) the defendant filed an affidavit of defense, containing but the general statement as follows: "I have a true and sufficient defense to said cause of action, as follows: In that said premises were not bought for the use and occupancy by the plaintiff, and plaintiff does not intend to occupy the same as in her affidavit set forth; that said premises are now for sale by the plaintiff, and this plaintiff has no idea, purpose or intention of occupying said premises for any purpose whatsoever. And defendant therefore denies the right of the plaintiff to the possession of said premises."

That on November 10, 1919, by leave of Court, the defendant filed the following amended affidavit of defense wherein he sets forth that he, defendant, is employed by the Government in the office of the Treasury, Auditor for the War Department, and sets forth his defense to be, "While the plaintiff has purchased the premises herein, yet said purchase was not made for the use of a home by the plaintiff or for occupancy by the plaintiff, but for the purpose of profiteering in said real estate transaction; that this was the only purpose of said purchase and further that the plaintiff has offered the property for sale with a view to making a profit on the same

and plaintiff has no intention whatever to occupy said premises for any purpose whatever, her sole object being to oust the defendant who is engaged in Government work as aforesaid, for her own profit and benefit." (r. p. 8).

That on November 14, 1919, the Supreme Court of the District of Columbia rendered judgment in favor of plaintiff, against defendant, for possession of the premises in controversy, for want of sufficient affidavit of defense. That the defendant appealed to this Court from said judgment against him, and for the first time, December 11, 1919 (r. p. 9), therein refers to the Ball Act, by the assignment of error, as follows:

"And also contrary to the provisions of what is known as the Ball Act." The Ball Act became law October 22, 1919, and the Rent Commission was sworn in about January 21, 1920. That the defendant filed his brief as appellant in this cause on January 10, 1920, and the same day he, defendant, filed proceedings before the Rent Commission.

ARGUMENT

The defendant enumerates six assignments of error in his brief, and then (p. 3 appellant's brief) reduces them to two assignments, namely,

1. The appellant was deprived by said judgment of the court of the right to trial by jury.

2. The act of the Court below deprives the appellant of his rights under and by virtue of the Act of Congress known as the Ball Amendment to the

anti-profiteering law of the 66th Congress, approved October 22, 1919.

I.

The first assignment of error that Law Rule 19, deprives defendant of his right to a trial by jury, has been decided by this Court adversely to appellant's contention so many times, that it seems strange that it should be raised again. The constitutionality of Law Rule 19 (formerly Law Rule 10) has been settled by this Court in the following cases:

Columbia Laundry Co. vs. Ellis, 36 App. D. C. 583-586, in which the Court said (p. 585) "This rule is analogous to common-law rule 73, and is most equitable in its application. If a tenant has a meritorious defense, he may not be summarily ejected, if he has no defense, it enables the landlord to gain speedy possession of his property and thus avoid further loss and expense."

See also, to the same effect: Clifford A. Borden vs. Phillip T. Carter, Vol. 47, W. L. R. p. 749, (appeals volume not out). (1919). Maxwell vs. Brayshaw, 47 W. L. R. p. 342, Appeals D. C., not out, (1919). Gans vs. Goldenberg, 39 App. D. C. 597.

The plaintiff sets forth specifically the conditions surrounding her old home, the nuisance from noises (r. p. 3), that the premises sued on in this case are free from those annoyances, and that for those reasons she purchased the same for her own occupancy. Plaintiff further attaches to her

affidavit copies of the deed of sale of the premises in controversy to her, the rental agreement formerly existing between defendant and the former owner showing defendant's tenancy, a statement that a new verbal agreement had been entered into between defendant and the agents of the former owner, showing assignments of the letting to plaintiff, a copy of the written thirty days notice served by plaintiff on defendant, personally, and the proceedings thereon as provided by law.

Defendant's affidavit on the other hand does not deny any of these statements of fact, but merely relies upon the statement of a conclusion, that "said purchase was not made for the use of a home by plaintiff." Defendant's affidavit then states that plaintiff purchased the premises "for the purpose of profiteering in said real estate transaction" and plaintiff "has offered the property for sale with a view to making a profit on the same, and plaintiff has no intention whatever to occupy said premises for any purpose whatever, her sole object being to oust the defendant who is engaged in Government work as aforesaid, for her own profit and benefit."

That this affidavit was filed before the Court of Appeals rendered its opinion construing the so called Saulsbury Resolution, Approved May 31, 1918, and extended July 11, 1919.

Even if this Saulsbury Resolution were valid, the affidavit of defense does not contain in "precise and distinct terms the grounds of defense which must, be such as would, if true, be sufficient to de-

feat plaintiff's recovery." It does not deny the facts stated in plaintiff's affidavit that induced her to sell her old home and to purchase the present home in controversy. It contains merely a statement of a conclusion, which under this Court's ruling is not a sufficient compliance with Law Rule 19; *Borden vs. Carter*, 47 W. L. R. p. 749, Appeals D. C., not in print, (1919.) *Maxwell vs. Brayshaw*, 47 W. L. R. p. 342, Appeals D. C., not in print, (1919). Even the statement of the defendant that plaintiff purchased the premises for the purpose of profiteering is but vague and indistinct; to whom was the property offered for sale, under what conditions, what was the price, what price did plaintiff pay for the premises?

But after this instant case was perfected on appeal, this Court in *Hannah T. Willson against Curtis C. McDonnell*, App. D. C. 48, W. L. R. p. 6, (December 1, 1919), declared the so called Saulsbury Resolution to be unconstitutional.

It was just 10 days after this decision by the Court of Appeals, namely December 11, 1919 (record p. 9) that defendant changed his horses in crossing the stream, and injected into his assignments of error, the provision that the Court below erred in that its decision was "contrary to what is known as the Ball Act," and in his brief (page 3) he abandons the assignment as to the Saulsbury Joint Resolution.

II.

The defendant's second assignment of error is:

"The act of the Court below deprives the appellant of his rights under and by virtue of the act of Congress known as the Ball Amendment to the Anti-profiteering Law of the 66th Congress, approved October 22, 1919."

The appellee contends that the so called Ball Act or Ball Amendment is unconstitutional and void, for the reasons:

1. The Constitutional guarantees of life, liberty and property apply to the District of Columbia.
2. It is contrary to the provisions of the Fifth Amendment to the Constitution of the United States.
3. It is contrary to Article VII of the amendments to the Constitution of the United States.
4. It is contrary to Article XIV of the amendments to the Constitution of the United States.
5. It is contrary to Article I, Section 10 of the Constitution of the United States.

That the said act even if it had been constitutional is not retroactive.

1. That the Constitutional guarantees of life and liberty and property, apply to the District of Columbia, was recently decided by this Court in the case of Willson vs. McDonnell, 48 W. L. R., p. 6, (December 1, 1919), wherein this Court says:

“There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the Constitutional guarantees of life, liberty and property.”

Citing *Callan vs. Wilson*, 127 U. S. 540-550.

And further in citing *Wight vs. Davidson*, 181 U. S. 371-384, this Court quotes:

“No doubt in the exercise of such legislative powers, Congress is subject to the provisions of the Fifth Amendment to the Constitution of the United States, which provides among other things, that no person shall be deprived of life, liberty or property without due process of law, nor shall any private property be taken for public use without just compensation.”

It has been popularly asserted that Congress acting under the war powers contained in the Constitution could validly enact the provision of the Ball Law, hereinafter referred to, and that limitations and prohibitions upon its powers in the Constitution were suspended. No case has been found upholding such a theory. This Court in the case of *Willson vs. McDonnell* ante states:

“The Constitution is not superseded by a declaration of war, and experience has

demonstrated that national provision may be made for 'the national security and defense' without overstepping its limitations. In the present case for example, by the exercise of the power of eminent domain the Government might have checked and thwarted any tendency on the part of landlords toward extortion, and, at the same time have satisfied the due process clause of the Constitution."

This Court having decided this question adversely to the defendant's contention, the appellee simply recites references to cases fully sustaining this Court in that holding, namely:

Horn vs. Lockhart, 17 Wall (1873) 570.

Downes vs. Bidwell, 182 U. S. 244-289.

Scott vs. Sanford, 19 How. 393.

Dorr vs. U. S., 195 U. S. 138.

Capital Traction Co. vs. Hoff, 174 U. S. page 1.

That the provisions of the Act are in violation of the Fifth Amendment to the Constitution of the United States.

In the case of Willson vs. McDonnell, 47 W. L. R. p. 6, (1919) ante, this Court has decided that the provisions of the Fifth Amendment to the Constitution of the United States apply to the District of Columbia. The Fifth Amendment provides:

"* * * nor shall any person * * * be deprived of life, liberty or property, without due process of law, nor shall private

property be taken for public use without just compensation."

The cases heretofore cited uphold this doctrine in the District of Columbia:

Callan vs. Wilson, 127 U. S., 540-550.

Wight vs. Davidson, 181 U. S. 371-384.

The Ball Act provides—

"Such complaints (to the commission—insert CSS) may be made (a) by or on behalf of any tenant, and (b) by any owner except where the tenant is in possession under a lease or other contract, the term specified in which has not expired, and the fairness and reasonableness of which has not been determined by the commission."

In other words, if a tenant is under a lease, no matter how old, and long existing, he may at his option have the terms thereof brought before the commission, but if the tenant does not object thereto, the owner cannot object. In other words, the owner is bound by a contract of lease but the tenant is *not so bound*.

The act further provides, that all tenancies existing at the time of the Act shall, "notwithstanding the expiration of the term fixed by such lease or contract, *continue at the option of the tenant*, subject however to any determination of or regulation of the commission relevant thereto, and such tenant shall not be evicted so long as he pays the rent,"

etc. etc. Thus, the ownership of the property is practically taken from the owner and given to the tenant, and he may stay therein so long as he pays the rent and complies with terms of the contract, and it suits his convenience and desires so to do. If the tenant is obnoxious to the owner or the owner desires to place some one else therein more to his liking he cannot do so. It is in direct violation of the Fifth Amendment and further of the obligations of a contract.

The cases of—

Adair vs. U. S. 208 U. S. 161.

Allegeyer vs. Louisiana, 165 U. S. 573,
condemn all interference with private contract.

The contract in this case provides that:

“The lessee shall be entitled to not less than 30 days notice to vacate the house and premises which notice shall be given in writing at least thirty days before said tenancy is intended to be terminated.”

The owner has given this 30 days notice in writing, and before the Ball Amendment was passed, and the notice terminated before the Ball Amendment was passed; and even if it had not been so given before the passage of the Ball Act, how can the right of an owner and tenant so to contract be destroyed by Act of Congress? And under this Act the tenant can ignore a lease, or stay in indefinitely after the termination of a lease, all as he deems proper; and the hands of the landlord are tied as

to his own property and contracts. Under the Constitution Amendment 14, every man is entitled to the equal protection of the laws.

3. The Act is contrary to Article VII of the Amendments to the Constitution of the United States. This amendment provides:

“In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”

Can a case be conceived more in conflict with this provision of the Constitution of the United States, than the instant case? Here the Supreme Court of the District of Columbia, a legal tribunal, has held that the defendant by his affidavit of defense has utterly failed to show any pretense of a defense entitling the cause to go to trial; this Court has a jury. The amount in controversy exceeds \$20. Pending an appeal to this Court and on the day he files his brief therein the defendant attempts to bring this case before the Rent Commission. He has no defense, he will not wait for this Court to decide he has no defense, but acts at this stage of the case at his own initiative. And what kind of a Court is the Rent Commission?

This Commission is not a Court, it is not a common law Court, it cannot conduct its proceedings

according to the common law; it has no jury; in the event of an adverse opinion the plaintiff herein must appeal to this Court, and yet without a trial by jury, and if by any procedure unknown to this appellee the case could get in a common law Court from that decision, the Act provides that such common law Court shall be bound by the finding of fact by the Rent Commission.

Sec. 106 of the Act provides—

“In any suit in any Court of the United States or the District of Columbia, involving any question arising out of the relation of landlord and tenant with respect to any rental property, apartment or hotel, *except on appeal*, from the commissioner's determination as provided in this title, such court shall determine the rights and duties of the parties in accordance with the determination and regulations of the commission relevant thereto.”

And even upon appeal from this Rent Commission to the Court of Appeals, “the commission's determination shall not be modified or set aside by the Court, except for error of law.”

Questions of fact involving possession of property worth thousands of dollars are to be determined by the rent commission whose rulings of fact are conclusive, by the terms of the act. No appeal can be taken to the Supreme Court of the District of Columbia, wherein a jury trial could be

had, but only to the Court of Appeals. Where is the right of trial by jury?

In *Capital Traction Company vs. Hof*, 174 U. S. 1, 5, 43, a case from the District of Columbia, the Court holds:

“The Congress of the United States being empowered by the Constitution ‘to exercise exclusive legislation whatever’ over the seat of National Government, has the entire control of the District of Columbia for every purpose of Government, national or local. It may exercise within the District all legislative powers that the legislature of a State might exercise within the State, and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them as it may think fit so long as it does not *contravene any provision of the Constitution of the United States.*” page 5.

(Citing *Mattern vs. D. C.* 97 U. S. 687-690 and *Gibbons vs. D. C.*, 116 U. S. 404-407).

“It is beyond doubt, at the present day, that the provisions of the Constitution of the United States securing the right of trial by jury whether in civil or criminal cases, are applicable to the District of Columbia.” page 5.

(Citing Callan vs. Wilson, 127 U. S. 540-550, Thompson vs. Utah, 170 U. S. 343).

“Either party to an action at law (as distinguished from suits in equity or in admiralty) in a court of the United States, where the value in controversy exceeds twenty dollars, has a right to a trial by jury,” etc. etc.

“Trial by jury in the primary and usual sense of the term at common law and in the American Constitution, is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be summoned and empaneled, to administer oaths to them and to the constable in charge, and to enter a judgment and issue execution on their verdict, but it is a trial by a jury of twelve men in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts, and (except on acquittal of a criminal charge) to set aside the verdict if in his opinion it is against the law and the evidence.” Page 13.

“Justices of the peace in the District of Columbia in the exercise of the jurisdiction conferred upon them by Congress to try and determine cases civil or criminal, are doubtless in some sense judicial officers. But

they are not inferior courts of the United States, for the Constitution requires judges of all such courts to be appointed during good behavior. Nor are they in any sense courts of record. They were never considered in Maryland as 'courts of law'."

(Citing *Callan vs. Wilson*, 127 U. S. 540), page 17.

Can there be any argument that the Rent Commission is a Court of Law as contemplated in the Constitution of the United States?

In *Canada Northern Railway vs. International Bridge Co.*, 7 Fed. Rep. 653. it is held:

"The rights are created and established by the Act, and this is the office of the legislative department. The power to adjudicate upon these rights, to ascertain, when controversy arises, their extent and value and apply the appropriate remedy for their protection, is conferred upon the court; and this is the peculiar province of the judicial department." Page 655.

In *Kilborne vs. Thompson*, 103 U. S. 168-190 it is held:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to Government whether state or

national are divided into three grand departments, the executive, the legislative and the judicial. That the functions appropriate to each of these branches of Government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and to no other."

See also in *Re Henry B. F. MacFarland*, 36 W. L. R. 114 Appeals D. C.

That the police powers in the United States Government do not in any way permit it to violate the Constitution of the United States. That the provision in Section 122 of said Ball Act as to the necessity for the Act and the conditions surrounding its passage, has no binding effect upon this Court.

The purpose of a statute must be determined from the natural and legal effect of the language employed, and whether it is or is not repugnant to the Constitution of the United States must be determined from its natural effect when put into

operation, and not from its proclaimed purpose. The mere fact that the enactment purports to be for the protection of the public safety, or morals, is not conclusive upon the Courts, and if a statute purporting to have been enacted to protect the public safety, life, or morals has no real or substantial relation to those objects or if it is a palpable invasion of rights secured by the fundamental law, it is the duty of the Court to look beyond its mere letter, and so adjudge, and thereby give effect to the Constitution.

See:

Henderson vs. Mayor, 92 U. S. 259;
 Bremmer vs. Rebman, 138 U. S. 78;
 Lawton vs. Steele, 152 U. S. 133;
 Hennington vs. Georgia, 163 U. S. 299;
 Otis vs. Parker, 187 U. S. 606;
 Lochner vs. New York, 198 U. S. 45.

“If the State legislature under the pretense of guarding the public health, the public morals, or the public safety, should invade the rights of life, liberty or property, or other rights secured by the Supreme Law of the land, it would be the duty of the Courts to declare such statute unconstitutional.”

Powell vs. Pa., 127 U. S. 678-686.

In Connolly vs. Union Sewer Pipe Co., 184 U. S. 540, Justice Harlan says:

“No right granted or secured by the Constitution of the United States can be impaired, or destroyed by a State enactment, whatever may be the source with which the power to pass such enactment may be derived. ‘The nullity of any act inconsistent with the Constitution of the United States is produced by the declaration that the Constitution is the Supreme Law.’ The State has undoubtedly the power by appropriate legislation to protect the public morals, the public health, the public safety, but if by their necessary operation, its regulations, looking to either of these ends, amounts to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void.”

If the legislature under the pretense of guarding the public health, the public safety, or the public morals, should invade the rights of life, liberty, or property, or other rights secured by the Supreme Law of the land, it would be the duty of the Courts to declare such State statute unconstitutional.

Powell vs. Pennsylvania, 127 U. S. 678-686;
Lochner vs. New York, 198 U. S. 45.

See also

Gibbons vs. Ogden, 9 Wheat, 1;
Sinnot vs. Davenport, 22 How. 227;
Missouri, et. R. R. vs. Haber, 169, U. S. 613;
Dobbins vs. Los Angeles, 195 U. S. 223-236;

Munn vs. Illinois, 94 U. S. 113;
Mugler vs. Kansas, 123 U. S. 623;
Jacobson vs. Mass., 197 U. S. 11.

Respectfully submitted,

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